

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

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| SMYRNA EDUCATORS' ASSOCIATION, | : | |
| Charging Party, | : | |
| | : | |
| v. | : | <u>U.L.P. No. 88-12-032</u> |
| | : | |
| BOARD OF EDUCATION OF THE SMYRNA | : | |
| SCHOOL DISTRICT, | : | |
| Respondent. | : | |

DECISION

The Board of Education of the Smyrna School District (hereinafter "District") is a public employer within the meaning of 14 Del.C. section 4002(m). The Smyrna Educators' Association (hereinafter "Association") is the exclusive representative of the public school employer's certificated professional employees within the meaning of 14 Del.C. section 4002(h).

The Association filed an unfair labor practice charge alleging that the District willfully and intentionally failed to bargain in good faith in violation of 14 Del.C. sections 4007(a)(1), (5) and (6). The District filed its Answer to the charge on December 21, 1988. A public hearing was conducted on February 13, 1989 and closing briefs were simultaneously received on February 17, 1989.

FACTS

The Smyrna Educators' Association and the Board of Education of the Smyrna School District were parties to a collective bargaining agreement effective July 1, 1986 through June 30, 1988. The salary matrix for year 1 (1986-87) of the contract was derived from a distribution 100% of new funds generated by a referendum passed in November, 1985. These new funds included both direct revenue from the local tax increase plus matching funds made available under the State's Equalization Plan (also known as Division III monies). Computation of the salary matrix for year 2 (1987-88) of the contract was based on the formula set forth in Article XXVIII of the agreement, entitled Local Salary Schedule for Teachers and Nurses, which provides in relevant part:

Beginning July 1, 1987 Step 17 will be added to the local salary schedule.

Beginning July 1, 1987 85% of the increase of Division III money will be applied to the local salary schedule on a percentage basis. Other employee costs will be deducted just from the 85% of the Division III funds. 1

Beginning July 1, 1987 an across the board increase will be added to the local salary scale from a sum derived from fringe and extra-duty increases of 12% less O.E.C. (Approximate increase - \$100)

The matrices generated for years 1 and 2 of the contract are not in dispute. It is the impact of the Article XXVIII language after the

1 This contractual provision is referred to as the "85% provision" throughout this decision.

expiration of the contract which is at the core of the issue raised by this charge.

On April 12, 1988, the citizens of the Smyrna School District approved a second referendum resulting in the receipt of approximately \$265,000 in additional Division III funds for the 1988-89 school year. Beginning with the first pay period of the 1988-89 school year, the District continued to pay its certificated professional staff according to the salary matrix generated and used during the 1987-88 school year, i.e., year 2 of the prior agreement. All eligible staff members were granted local step increases for additional education and experience credits within the framework of this matrix.

The parties have been engaged in negotiations for a successor agreement since March, 1988. As of the date of this decision, the parties have not reached agreement and are currently involved in mediation of their dispute.

ISSUE

WHETHER THE BOARD OF EDUCATION OF THE SMYRNA SCHOOL DISTRICT COMMITTED AN UNFAIR LABOR PRACTICE IN VIOLATION OF 14 DEL.C. SECTIONS 4007 (a) (1), (5), AND/OR (6) 2 WHEN, AFTER THE EXPIRATION OF A

2 14 Del.C. section 4007 (a): It is an unfair labor practice for a public school employer or its designated representative to do any of the following:

- (1) Interfere with, restrain or coerce any employee in or because of the exercise of any right guaranteed under this chapter.
- (5) Refuse to bargain collectively in good faith with an employee representative which is the exclusive representative of employees in an appropriate unit.
- (6) Refuse or fail to comply with any provision of this chapter or with rules and regulations established by the Board pursuant to its responsibility to regulate the conduct of collective bargaining under this chapter.

COLLECTIVE BARGAINING AGREEMENT AND DURING A PERIOD OF NEGOTIATIONS FOR A SUCCESSOR AGREEMENT, IT CONTINUED TO PAY ITS CERTIFICATED PROFESSIONAL STAFF IN ACCORDANCE WITH ITS PRIOR YEAR'S SALARY MATRIX?

PRINCIPAL POSITIONS OF THE PARTIES

Association:

The Association takes the position that the District has committed an unfair labor practice by failing to institute a salary matrix for the 1988-89 school year reflecting an increase of 85% of the additional Division III funds as required by Article XXVIII of the expired collective bargaining agreement.

In support of its position, the Association argues that the language of Article XXVIII itself establishes the status quo which the parties are obligated to maintain until the terms of a successor agreement can be reached through the collective bargaining process. The Association asserts that the District never sought, nor obtained, a clear and unequivocal waiver of the applicability of this language in the event that the negotiation of a successor agreement was not successfully completed by the expiration date of that 86-88 contract.

Alternatively the Association contends that the PERB has adopted a status quo standard which requires the District, as a matter of law, to generate a salary matrix for the present school year in accordance with the 85% formulation used to generate the matrix for last year of the agreement.

District:

The District argues that the Association is attempting to

destroy the status quo and to place a floor under negotiations by requiring the District to create a new salary matrix formulated on an increase in an amount equal to 85% of the increase in Division III funds for 1988-89. It further asserts that the District has fulfilled its obligation to maintain the true status quo by granting experience and educational credits to all eligible teachers, i.e., moving teachers within the salary matrix in effect at the expiration of the prior collective bargaining agreement. Finally, the District argues that there is no evidence of any intent by the parties that the 85% provision would have any effect beyond June 30, 1988.

OPINION

The issue raises the threshold question of what constitutes the status quo after expiration of a collective bargaining agreement in the interim period until terms of a successor agreement are established. As a matter of law, specific contract provisions continue in force only for the term of the collective bargaining agreement. Appoquinimink Education Assn. v. Appoquinimink Bd. of Education, Del.PERB, U.L.P. No. 1-2-84A (July 23, 1984). The PERB has previously determined that it is the maintenance of the relationship existing between the parties at the time of the expiration of the contract which constitutes the status quo. New Castle County Vo-Tech Education Assn. v. New Castle County Vo-Tech School District, Del.PERB, U.L.P. No. 88-05-025 (8/19/88).

Article XXXI, Duration of the Agreement, clearly sets forth the term of the contract. It provides:

- A. This Agreement shall be effective on the 1st day of July, 1986 and shall continue in effect until the 30th day

of June, 1988, and it is expressly understood that it shall expire on the date indicated unless it is extended in writing. Consistent with this language is the testimony offered by numerous members of each negotiating team that there was no agreement, written or otherwise, for any individual contractual provisions to survive the two year term of the agreement.

This charge involves events occurring after the expiration of the collective bargaining agreement. While the specific language of Article XXVIII may provide insight into the nature of the underlying relationship between the parties, it is not the sole determinant of the status quo existing at the time of expiration and is not, therefore, dispositive of the issue. Any obligation on the District's part to increase the salaries of its employees does not originate in the provisions of the expired agreement but rather must arise, as a matter of law, under the operation of the Public School Employment Relations Act (14 Del.C. Chapter 40).

In the area of salaries (a mandatory subject of bargaining under 14 Del.C. section 4002 (p)), the PERB has held that, absent agreement to the contrary, the salary matrix in effect at the time a contract expires constitutes the status quo which must be maintained. The PERB has further required employers to grant increases for any movement by employees within the cells of that matrix. Appoquinimink (Supra.); Brandywine (Supra.). 3

The generation of the local salary matrix is properly a subject for the collective bargaining process. There exists no automatic

3 The conditions precedent to advancement within this salary matrix are completion of an additional year of teaching experience and/or completion of additional educational credits.

method for increasing or decreasing the entire matrix; rather, it is a subject negotiated by each district with the representative of its employees. No evidence presented in this case suggests that a prior practice exists in the Smyrna School District of increasing the local salary matrix, after the expiration of the prior collective bargaining agreement, by a method consistent with that used to generate the matrix during the final year of the expired agreement. Absent such a practice, the District met its responsibility to adhere to the local salary matrix in effect at the expiration of the prior agreement.

To support its contention that the development of a new and upgraded local salary matrix is required for the 1988-89 school year, the Association relies upon the prior PERB decision in Smyrna Education Association v. Board of Education (Del.PERB, U.L.P. No. 88-08-015 (October 26, 1987)). The case before us is clearly distinguishable in that it involves conduct occurring after the expiration of the collective bargaining agreement, whereas the prior Smyrna case (Supra.) involved a unilateral change during the term of an agreement. It is fundamental that the contractual obligation is limited to term of the collective bargaining agreement. The present case, however, arises in the absence of a current, binding agreement and must, therefore, be resolved based on the status quo existing between the parties at the time the contract expired.

Lastly, the official minutes of the March 16, 1988 Board of Education meeting include the following paragraph:

Upon motion by Mr. McGrath, seconded by Mr. Banta, and carried by four affirmative votes (Mr. Nelson abstained), the Board requested S.E.A. bring before their full membership for

a vote as soon as possible, a recommendation that they forego the additional Division III money to which under the current contract they are clearly entitled. [District Exhibit 8]

The Association asserts that this motion evidences a clear recognition by the Board of its obligation to increase the local salary matrix in 1988-89 in a matter consistent with the 85% provision. A careful reading of the full minutes, however, results in more questions than answers as to the meaning of this motion. It is unclear whether the "additional Division III money" relates to the 1987-88 school year (whose salary matrix had been the subject of a prolonged dispute before the PERB for much of that school year) or to 1988-89. Further, the motion addresses monies to which the teachers "were clearly entitled" "under the current contract". There has been no "current contract" throughout the 1988-89 school year. Finally, this paragraph from the minutes was not elucidated by testimony from either party during the hearing. Without supporting evidence as to its meaning, this summary sentence from the minutes is ambiguous and, therefore, has no persuasive impact on the decision reached herein.

CONCLUSIONS OF LAW

1. The Board of Education of the Smyrna School District is a public employer within the meaning of 14 Del.C. section 4002(m).
2. The Smyrna Educators' Association is an employee organization within the meaning of 14 Del.C. section 4002(g).
3. The Smyrna Educators' Association is the exclusive representative of the certificated professional employees of the Smyrna School District within the meaning of 14 Del.C. section 4002(h).

4. The Board of Education of the Smyrna School District did not, by its actions, interfere with, restrain or coerce any employee in or because of the exercise of any right under the Public School Employment Relations Act. The Association's charge that the District engaged in conduct in violation of 14 Del.C. section 4007 (a) (1) is dismissed.

5. The Board of Education of the Smyrna School District did not, by its actions, refuse to bargain collectively in good faith with the exclusive bargaining representative. The Association's charge that the District engaged in conduct in violation of 14 Del.C. section 4007 (a) (5) is dismissed.

6. The Board of Education of the Smyrna School District did not, by its actions, refuse or fail to comply with any provision of the Public School Employment Relations Act or with rules or regulations established by the PERB. The Association's charge that the District engaged in conduct in violation of 14 Del.C. section 4007 (a) (6) is dismissed.

IT IS SO ORDERED.

Deb. Murray-Sheppard

DEBORAH L. MURRAY-SHEPPARD

Principal Assistant/Hearing Officer

Delaware PERB

Charles D. Long, Jr.

CHARLES D. LONG, JR.

Executive Director

Delaware PERB

DATED: March 23, 1989